

HOUSE No. 3463

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act preserving publicly assisted affordable housing..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 The General Laws are hereby amended by inserting after chapter 40S the following
2 chapter:-

3 CHAPTER 40T

4 PRESERVATION OF PUBLICLY ASSISTED HOUSING.

5 Section 1. As used in this chapter, the following words shall have the following
6 meanings:

7 “Affected municipality”, any city or town in which publicly assisted housing or a
8 publicly assisted housing development is located.

9 “Affiliate”, an entity owned or controlled by an Owner.

10 “Affordability restrictions”, limits on rents that an owner may charge for occupancy of a
11 rental unit in a publicly assisted housing development and/or limits on tenant income for persons
12 or families seeking to qualify for admission to such housing.

13 “CEDAC”, the Community Economic Development Assistance Corporation, a body
14 politic and corporate entity established by chapter 40H.

15 “Chief Executive Officer”, the mayor in a city and the board of selectman in a town,
16 unless some other municipal office is designated to be the chief executive officer under the
17 provisions of a local charter.

18 “Department”, the Massachusetts department of housing and community development or
19 any successor agency.

20 “Designee”, a municipality, local or regional housing authority, non-profit or for-profit
21 corporation, or other entity qualified to do business in Massachusetts, which is capable of
22 operating publicly assisted housing as decent, safe, and sanitary affordable housing, and which is
23 selected by the department pursuant to subsection (b) of section 3.

24 “Enhanced section 8 vouchers”, vouchers provided under Section 8(t) of the United
25 States Housing Act of 1937, 42 U.S.C. 1437f(t), as amended from time to time, or substantially
26 equivalent assistance.

27 “Extremely low income”, a household income of no more than 30 per cent of the area
28 median income, adjusted for household size, as periodically determined by the United States
29 Department of Housing and Urban Development.

30 “Government program”, a program or combination of programs which provides
31 government assistance under one or more of the programs identified below in the definition of
32 publicly assisted housing.

“Low income”, a household income of no more than 80 per cent of the area median income, adjusted for household size, as periodically determined by the United States Department of Housing and Urban Development.

“Owner”, a person, firm, partnership, corporation, trust, organization, limited liability company, or other entity, and its successors or assigns, that holds title to a publicly assisted housing development. “Prepayment”, the payment in full or the refinancing of a governmentally insured or government-held mortgage indebtedness prior to its original maturity date, or the voluntary cancellation of mortgage insurance, on a publicly assisted housing development, or payment in full on a government contract, any of which would have the effect of removing either (i) the affordability restrictions applicable to the publicly assisted housing development or (ii) a requirement to renew any such affordability restrictions. “Preserve affordability” or “preserves affordability”, with respect to a publicly assisted housing development, to undertake reasonable and diligent actions to retain, renew and/or secure subsidies affecting a publicly assisted housing development in order to maintain at least the same number of units affordable to low, very low and extremely low -income households, respectively, as are currently occupied by such households, and to maintain as affordable to such households generally all units that are currently vacant, to the extent of available subsidies and taking into account the need to ensure that the development provides quality housing to its tenants.

“Protected low-income tenant” means a low income tenant residing in the publicly assisted housing development on the date of termination and whose rent was restricted by the government program being terminated. “Publicly assisted housing” or “publicly assisted housing development”, housing that receives government assistance under any of the following programs: (i) section 8 of the United States Housing Act of 1937, as amended, 42 U.S.C. section

1437f as it applies to new construction, substantial rehabilitation, moderate rehabilitation,
property disposition and loan management set--aside programs, or any other program providing
project-based rental assistance; (ii) section 42 of the Internal Revenue Code, as amended, 26
U.S.C. section 42, the federal Low-Income Housing Tax Credit Program; (iii) section 101 of the
Housing and Urban Development Act of 1965, as amended, 12 U.S.C. section 1701s as it applies
to programs for rent supplement assistance thereunder; (iv) section 202 of the Housing Act of
1959, as amended, 12 U.S.C. Section 1701q; (v) section 221(d)(3) of the National Housing Act
of 1934, as amended, 12 U.S.C. section 1715l (d)(3) or (5), the below market interest rate
program; (vi) section 221(d)(4) of the National Housing Act, as amended, 12 U.S.C. section
1715l (d)(4), to the extent the project's rents are restricted pursuant to a government agreement;
(vii) section 236 of the National Housing Act, as amended, 12 U.S.C. section 1715z-1; (viii)
section 515 of the Housing Act of 1949, as amended, 42 U.S.C. section 1485; (ix) section 521 of
the Housing Act of 1949, as amended, 42 U.S.C. section 1490a; (x) the Urban Development
Action Grant, as amended, 42 U.S.C. Section 5318, to the extent that the affordability of
dwelling units subject to such program are restricted pursuant to a government agreement; (xi)
the Housing Development Action Grant, as amended, 42 U.S.C. section 1437o, to the extent the
project's rents are restricted pursuant to a government agreement; (xii) section 13A of chapter
708 of the Acts of 1966; (xiii) the Massachusetts Rental Voucher Program, so called, as
described in line item 7004-9024 from year to year of the acts making annual appropriations for
the commonwealth, as it applies to project-based rental assistance; (xiv) The state Low Income
Housing Tax Credit program, section 6I of chapter 62; (xv) the State Housing Assistance for
Rental Production, chapter 574 of the acts of 1983; (xvi) chapter 121A, to the extent that the
affordability of dwelling units are restricted pursuant to a written agreement with the affected

municipality; (xvii) other financing programs as identified by the department; (xviii) for the purposes of section 3 and section 4, housing that, as of the effective date of this chapter, qualified as publicly assisted housing under any of the aforementioned programs and was not then subject to a purchase contract in existence as of such date shall be subject to the provisions of this chapter for 4 years following the date of the last event or occurrence that constituted a termination; and (xiv) for the purposes of this chapter, housing that receives relief from local zoning in exchange for providing a percentage of units as affordable to low or moderate income residents that does not receive a financial subsidy shall not be considered publicly assisted housing.

“Purchase contract”, any legally binding document to sell a publicly assisted housing development, including without limitation a purchase and sale agreement, contract of sale, purchase option, or other similar document.

“Regulatory Agreement”, an affordable housing restriction that establishes an owner's obligations created pursuant to the efforts of the department or its designee to preserve affordability and which is consistent with G.L. Chapter 184 section 31 provided that in any project that is eligible for participation in the HUD mark up to market program, the restriction, insofar as it relates to the limiting of the level of rents, shall not apply to units covered by a section 8 housing assistance payment contract so long as such contract is effective.

“Sale” or “sell”, the execution of any written agreement pursuant to which the owner and/or the holders of ownership interests in the owner of the publicly assisted housing agree to the disposition of the property by deed or equivalent action, regardless of whether through a

100 single transaction or a series of transactions except for dispositions of such housing to an affiliate
101 of the owner.

102 “Subsidies”, public financial assistance, including but not limited to grants, loans, rental
103 assistance, tax credits, tax abatements, mortgage financing, mortgage insurance, assistance
104 pursuant to any government program, or any other form of assistance, intended to make housing
105 affordable to low income households, especially very low and extremely low
106 households. “Tenant”, a tenant, subtenant, lessee, sub-lessee or other person legally entitled to
107 possession, or occupancy of a rental unit within publicly assisted housing.

108 “Tenant organization”, an organization established by the tenants of a publicly assisted
109 housing development for the purpose of addressing issues related to their living environment and
110 which meets regularly, operates democratically, is representative of all residents in such
111 development, is completely independent of owners, management, and their representatives, and
112 which has filed a notice of its existence with CEDAC, provided that, no owner or other third
113 party shall be required to ascertain the organization’s compliance with this definition.

114 “Termination”, the cessation, discharge or removal of any affordability restrictions
115 affecting a publicly assisted housing development in the absence of a simultaneous replacement
116 of said affordability restrictions with equivalent affordability restrictions including, but not
117 limited to: (i) non renewal or termination, in whole or severable part, of a government program
118 contract or mortgage; (ii) expiration, in whole or in severable part, of an affordability restriction
119 under a government program or the requirement to renew such restrictions; (iii) payment in full
120 of a government program mortgage; or (iv) prepayment of a government program mortgage or
121 contract.

“Time for performance,” the date for delivery of the deed or other document evidencing a sale pursuant to a purchase contract, as such time may be extended from time to time as set forth in the applicable purchase contract.

“Very low income”, having a household income of no more than 60 percent of the area median income, adjusted for household size, as periodically determined by the United States Department of Housing and Urban Development

Section 2.

(a) Informational Notice. Except with respect to properties subject to an affordability restriction which has less than 2 years remaining, for which subsection (e) shall, apply, the owner of publicly assisted housing shall give a written notice to; (i) all tenants and any tenant organization of the publicly assisted housing; (ii) Chief Executive Officer of the affected municipality; (iii) CEDAC; and (iv) the department, not less than 2 years before the termination of the affordability restriction affecting publicly assisted housing covered by this chapter. Nothing herein shall prohibit the owner from taking actions to terminate affordability restrictions during the notice periods provided herein, provided that the owner complies with all of the notice terms and restrictions pursuant to subsections (b) and (c). The informational notice shall provide (1) the address of the publicly assisted housing; (2) the name and address of the owner; (3) notification that the affordability restrictions may terminate, (4) the date by which each affordability restriction may terminate, and (5) such other information as determined by the department. Where more than 1 termination may occur, the owner may send 1 such written notice so long as the terminations are scheduled to occur within 1 year of one another, the notice

is given at least 24 months prior to the earliest termination, and the notice otherwise complies with this subsection.

(b) Notice of Intent to Complete Termination. An owner of publicly assisted housing may not complete a termination or allow a termination to occur unless not less than 1 year before the completion of the last termination event affecting such housing, the owner provides the entities identified in subsection (a) with written notice of intent to complete termination. Such notice shall state: (1) the address of the publicly assisted housing; (2) the name and address of the owner; (3) the date on which the owner intends to complete termination; (4) unless section 6 applies, a statement that the department has the right of offer pursuant to section 3; and (5) such other information as determined by the department.

(c) An owner of publicly assisted housing shall not sell such housing before offering the department the opportunity to purchase the property pursuant to sections 3 and 4. The owner shall notify, in writing, the parties identified in subsection (a) of the owner's intention to potentially to sell said property.

(d) Any notice required by this chapter shall be deemed given when delivered in person or mailed by certified or registered mail, return receipt requested, to the party to who notice is required to be given. Notices to the affected municipality shall be given to the Chief Executive Officer.

(e) Notwithstanding the provisions of subsection (a), an owner of publicly assisted housing who, on the effective date of this act, has less than 2 years remaining prior to the date when the affordability restriction will cease to apply to such property, shall not be required to give the 2 year notice required by subsection (a), but shall give notice within 90 days of the

effective date of this chapter. Notwithstanding the provisions of subsection (b), an owner, who on the effective date of this chapter has less than 1 year remaining prior to a termination, shall not be required to give the 12 month notice required by subsection (b), but shall give notice within 90 days of the effective date of this chapter.

(f) The notice requirements herein shall not be affected by the status of any offer, purchase contract or sale under section 3 or section 4.

Section 3. (a) An owner of publicly assisted housing shall offer the department an opportunity to purchase such property prior to entering into an agreement to sell the property pursuant to the time periods contained in this section, but no owner shall be under any obligation to enter into an agreement to sell such property to the department.

(b) The department may select a designee to act on its behalf as purchaser of the publicly assisted housing and shall give the owner and CEDAC written notice in the event that it has selected a designee. The department shall promptly consult with the affected municipality prior to selecting a designee and shall immediately designate the affected municipality as its designee upon written request of the affected municipality, unless the department determines that such request is not approvable for reasons set forth in the department's regulations. The department shall enter into a written agreement with its selected designee providing that the designee, and any of its successors or assigns, agree to preserve affordability of the publicly assisted housing. Once such an agreement is entered into, the designee shall assume all rights and responsibilities attributable to the department as a prospective purchaser under this section and section 4. All references to the "department" in this section and section 4 shall include any such designee and all communications with the department under this section and section 4 shall be directed to the

department and the designee. At any time prior to a sale under section 3 or section 4, the department may revoke its designation and assume the designee's rights and responsibilities, either in its own capacity or by selecting a new designee; provided that in no event shall any such change in a designation extend or alter any time periods for performance set forth in this chapter or in any purchase contract entered pursuant to this chapter.

(c) The department shall have 90 days from the day it receives notice pursuant to section 2 of the owner's intention to sell, to submit an offer to the owner to purchase the publicly assisted housing. Failure by the department to submit a timely offer shall constitute an irrevocable waiver of the department's rights under this section. and the owner shall be permitted to sell the publicly assisted housing subject to the provisions of section 4. If the owner accepts the department's initial or any revised offer, the owner and the department shall enter into such other agreements as are necessary and appropriate to complete the sale. In the event the owner and the department have not entered into an agreement to sell the property to the department within 90 days of receipt of the notice pursuant to subsection (c) of Section 2, the owner shall be free to enter into an agreement to sell the property to a purchaser of the owner's choice subject to the department's right of first refusal as set forth in section 4.

(d) At any time after notice provided for in section 2 is given, and within 10 days of receiving a request, the owner shall make documents available to the department for review and photocopying during normal business hours at the owner's principal place of business or at a commercial photocopying facility. Such documents shall include, but not limited to: (1) any existing architectural plans and specifications of the development; (2) itemized lists of monthly operating expenses and capital expenditures in each of the 2 preceding calendar years; (3) any capital needs studies or market studies that have been submitted to a federal, state, or local

agency in the last 3 years; (4) utility consumption rates for the prior 12 months; (5) copies of the last 2 annual financial and physical inspection reports filed with federal, state or local agencies; (6) the most recent rent roll showing current vacancies and rent arrearages; (7) a list of vacant units; and (8) a statement of the approximate annualized vacancy rate at the development for each of the 2 preceding calendar years. Documents obtained pursuant to a request under this paragraph shall not be considered public records, as defined in clause 26 of section 7 of chapter 4 of the General Laws, and the department shall not make such documents available to the public except with the owner's written consent or pursuant to court order, provided that disclosure shall be permitted to potential funding sources, regulatory agencies, or agents or consultants of the department, in connection with the transaction, subject to appropriate confidentiality agreements. Upon request, and with appropriate notice, the owner shall also permit reasonable inspections of the dwelling units, building systems, common areas, and common grounds by agents, consultants and representatives of the department including but not limited to inspections related to environmental, engineering, structural or zoning matters.

(e) Not later than 30 days after the department submits an offer to purchase the publicly assisted housing development pursuant to subsection (c), above, the department shall notify tenants in such housing development and shall meet with the affected tenants at least once to discuss the department's plans.

Section 4. (a) The department or its designee shall have a right of first refusal to purchase any publicly assisted housing development as set forth in this section. At any time after the 90 days the department has been given notice pursuant to subsection (c) of section (2), but not later than the 360 days after the date of such notice, the owner may execute a purchase contract with a third party to sell the publicly assisted housing development provided the owner

complies with this section. Thereafter, the owner again shall be subject to the notice provision of subsection(c) of section (2).

(b) Upon execution of any third party purchase contract, the owner shall promptly, within seven days, notify the department and CEDAC of such execution by providing a copy of the third party purchase contract, along with a proposed purchase contract for execution by the department. The department shall have 30 days from the date it receives the third party purchase contract and the proposed purchase contract to execute the proposed purchase contract, or such other agreement as is mutually acceptable to the owner and the department. These time periods may be extended by mutual agreement of the owner and the department. The proposed purchase contract shall contain the same terms and conditions as the executed third party purchase contract, except that the proposed purchase contract with the department shall provide terms no less favorable than the following: (i) the earnest money deposit shall not exceed the lesser of: 1) the deposit in the third party purchase contract, (2) 2 per cent of the sales price or (3) \$250,000, and the earnest money deposit shall be held under commercially reasonable terms by an escrow agent mutually acceptable to the owner and the department; (ii) the earnest money deposit shall be non-refundable, other than for the owner's failure to perform its obligations, after a due diligence period of not less than 90 days from the date of execution of the purchase contract, or such greater period as was provided for in the third party purchase contract; and (iii) the time for performance shall be not less than 240 days from the date of the execution of the purchase contract, or such greater period as was provided for in the third party purchase contract.

(c) If the department fails to timely execute the proposed purchase contract within 30 days or such other period provided in subsection (b), then the owner shall have 24 months from the last day on which the department or designee was entitled to execute the proposed purchase

contract, in which to complete the sale of owner's publicly assisted housing development to any third party except as provided in (e). Upon the expiration of the 24 month period, the owner shall be subject again to all the provisions of subsection (c) of this section 2, section 3 and section 4.

(d) If the department executes the proposed purchase contract as provided in subsection (b) but fails to perform as provided in the executed purchase contract, then the owner shall have a period of 2 years from the date on which the department the proposed purchase contract terminated in which to complete the sale of the owner's publicly assisted housing development to any third party on economic terms and conditions that are not materially more favorable to the proposed purchaser than the economic terms and conditions in the proposed purchase contract offered to the department. Upon expiration of the 24 month period, the owner shall be subject to subsection (c) of section 2, section 3 and section 4.

(e) The department may make a counter offer to the owner by executing and submitting to the owner an amended proposed purchase contract. The owner shall have 30 days from the date it receives the amended proposed purchase contract to execute the amended proposed purchase contract or reject, in writing, the counter offer. If the owner rejects the counter offer, it shall have 24 months from the date on which the owner rejects the department's counter offer to complete the sale of the owner's publicly assisted housing development to any third party, provided that, if such sale is (i) upon economic terms and conditions that are materially more favorable to the proposed purchaser than the economic terms and conditions in the proposed purchase contract offered to the department or (ii) upon terms that are substantially the same as was offered by the department in the counter offer, then the owner shall provide a copy of the new third party purchase contract, along with a proposed purchase contract for execution by the department which shall contain the same terms and conditions as the executed third party

purchase contract, and the department shall have 30 days from the date it receives the third party purchase contract and the proposed purchase contract to execute the proposed purchase contract (or such other agreement as is mutually acceptable to the owner and the department).

(f) The owner shall promptly, but in any event within 7 days of execution thereof, provide the department with a copy of any new or amended purchase contract executed with respect to the property during the 2 year period set forth in subsections (c) , (d) and (e), and shall promptly, but in any event within 7 days of recording or filing thereof, provide the department with a copy of any deed or other document transferring owner's interest in the publicly assisted housing development.

(g) Any submission to the department of a third party purchase contract, amended third party purchase contract, or deed or other document transferring owner's interest in the publicly assisted housing development shall include a certification by owner and, with respect to any document executed by the third party buyer, the third party buyer, that same is accurate and complete, and there are no other agreements between owner and the third party buyer, or any affiliate of either, with respect to the sale of the publicly assisted housing development.

Section 5. For the purposes of this chapter, an affected municipality shall not be subject to the provisions of section 16 of chapter 30B.

Section 6. (a) The provisions of section 3 and section 4 shall not apply to any of the following: (i) a government taking by eminent domain or negotiated purchase in lieu of eminent domain; (ii) a forced sale pursuant to a foreclosure; (iii) a deed-in-lieu-of foreclosure; (iv) a proposed sale that, as determined by the department, is to a purchaser pursuant to terms and conditions that preserves affordability; (v) a proposed sale of a publicly assisted development

which the department has determined has a section 8 contract, as defined in publicly assisted housing in section 1, for all the units in the development and the buyer has agreed, in a regulatory agreement, to renew project-based section 8 assistance, or any successor program, for all units in the development provided that at the time of such renewal, such assistance is available to the owner on economic terms and conditions that are comparable to the existing assistance contract; (vi) a proposed sale of a publicly assisted development to an affiliate of the owner that is not a termination as determined by the department; and (vii) a proposed sale pursuant to a binding agreement in effect on the effective date of this chapter.

(b) An owner seeking an exemption under clauses (a)(iv), (v) or (vi) shall include the name and address of any tenant organization in the request, and shall provide a copy of its request to the Chief Elected Official of the affected municipality, CEDAC, the local legal services organization as designated by the department, and the tenant organization at the time it files its exemption request with the department. The department shall provide a copy of its written determination under clauses (a)(iv), (v) or (vi) to the owner, CEDAC, the local legal services organization, and any tenant organization.

Section 7. For a period of 3 years after termination, the rent for a protected low-income tenant who does not receive an enhanced section 8 voucher may not be increased more than once annually by the increase in the consumer price index applicable to the area in which the publicly assisted housing development is located during the prior 12 months plus 3%. The foregoing shall not apply to a low-income tenant (i) who is income eligible for an enhanced section 8 voucher but does not obtain one solely due to some action or inaction of the tenant on or after the date he or she is eligible to apply for an enhanced voucher; or (ii) who would be eligible for an enhanced section 8 voucher if this provision was not in effect. For a period of 3 years after termination, a

protected low-income tenant shall not be evicted or involuntarily displaced from his or her apartment except for good cause related to tenant fault.

Section 8. Any purchase by the department or by a purchaser pursuant to this chapter shall be subject to a regulatory agreement.

Section 9. An owner who has complied with the provisions of sections 2 and section 3 which has not resulted in a purchase by the department or its designee, or which has resulted in a sale pursuant to section 4 may apply to the department for a certificate of compliance by submitting a written request for said certificate in the form and with such documentation as required by the department to establish the owner's compliance to the satisfaction of the department. At the same time, the owner shall provide a copy of the request to CEDAC and the Chief Executive Officer of the affected municipality. The owner shall provide a copy of the owner's request to any tenant of the publicly assisted housing upon request. The department shall issue the certificate of compliance within 30 days of receipt of the application if it determines that the owner has complied with the provisions of sections 2 and 3. Upon issuance, the certificate of compliance shall be filed with the registry of deeds within 1 year after the date of issuance.

Section 10. Within 45 days of the passage of this chapter, the department shall establish a 12-member advisory committee, to consist of the undersecretary of the department or her designee, the executive director of the Community Economic Development Assistance Corporation, 1 member selected by the Massachusetts Mayors Association, 1 member selected by the Massachusetts Municipal Association, 1 member selected by Citizens' Housing and Planning Association, 1 member selected by the Greater Boston Real Estate Board, 1 member

346 selected by the Real Estate Bar Association for Massachusetts, 1 member selected by the
347 Massachusetts Association of Community Development Corporations, 1 member selected by
348 Massachusetts Legal Assistance Corporation, 1 member affiliated with the Affordable Housing
349 Preservation Initiative of the Local Initiatives Support Corporation, and 2 additional members
350 chosen by the department to provide advice and recommendations to the department regarding
351 regulations to implement this act; provided further, that the department shall promulgate
352 regulations to effectuate the purposes and to implement the provisions of this chapter within 150
353 days of the passage of this chapter.